

**THE LABOR COMMISSION
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Wednesday, March 19, 2008 - 12:00 P.M.
Room 319, Heber Wells Building
160 East 300 South
Salt Lake City, Utah**

The following Advisory Council members were in attendance:

Dawn Atkin, Esq.
Thomas Bingham, President, Utah Manufacturers Association
David Bird, Esq.
Brandt Goble, Painters and Tapers Local 77
Edward Holmes, M.D., RMCOEH
Susan Kelly, Liberty Mutual
Brian Kelm, Esq.
James V. Olsen, President, Utah Food Industry Association
Jeff Rowley, Risk Manager, Salt Lake County
Jan Moffatt for Lane Summerhays, CEO, Workers Compensation Fund
Brad Tibbitts, Utah State Insurance Department

The following Advisory Council members were excused:

Ralph Astorga, President USWA Local 392
Reo Castleton, SL County Fire Department
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter

Others Present:

Sherrie Hayashi - Commissioner
Alan Hennebold - Deputy Labor Commissioner
Larry Bunkall, Industrial Accidents Division Director, Labor Commission
Robyn Barkdull - Public Information Officer, Labor Commission
Dr. Alan Colledge - Medical Director, Labor Commission
Elena Bensor - Workplace Safety Manager, Labor Commission
Richard LaJeunesse - Administrative Law Judge, Labor Commission
Joyce A. Sewell- Retired Industrial Accidents Division Director, Utah Labor Commission
Erin Johnson- Utah Dept. of Health
Truman Child - Medical Fee Committee
Maggie Karpuck - NCCI
Peg Howarth - Medical Fee Committee

WELCOME

Commissioner Hayashi brought the meeting to order at 12:00 p.m.

1. Welcome – Commissioner Hayashi

Special Recognition for Joyce Sewell

Commissioner Hayashi recognized **Joyce Sewell** and thanked her for her many years of service to the Utah Labor Commission and her contributions to the Utah workers' compensation system. A clock was presented to **Ms. Sewell**, and a cake, wishing her well in her retirement, was served.

2. Miscellaneous Business – Commissioner Hayashi

a. Approval of Minutes -

Tom Bingham moved that the minutes of the February 4, 2008 meeting be approved. **Jeff Rowley** seconded the motion which passed unanimously.

b. Set 2008 Meeting Schedule –

Dates were chosen for the remainder of the meetings to be held for the Workers' Compensation Advisory Council: June 11, September 10 and Thursday, November 20.

c. Reappointment of Advisory Council Members -

Commissioner Hayashi stated that several members would be up for reappointment in June of this year. She said the Commission would be in touch with those members in the near future to discuss reappointment.

d. Introduction of new Industrial Accidents Director –

Commissioner Hayashi introduced **Larry Bunkall**, the new Director of Industrial Accidents and noted his past experience on the WCA Council and as an Appeals Board Member. **Mr. Bunkall** expressed his excitement to join the staff at the Commission and looks forward to the opportunity of making a contribution to the betterment of the workers' compensation system.

e. Introduction of new Workers' Compensation Advisory Council Ex-officio Member -

Commissioner Hayashi also introduced **Susan Kelley**, Liberty Mutual, a new member of the Council and welcomed her.

3. Discussion of proposed 2008 Medical Fee Adjustments – Dr. Alan Colledge –

Dr. Colledge gave an overview of the history of the adoption of the RBRVS schedule. He said it was adopted about six years ago and eliminates the past need for the Commission to update and publish over 7,000 codes. Using the RBRVS gives the Commission the advantage of national consensus building among panels of each medical specialty. He said each year the Medical Fee Advisory Committee revisits the schedule to make any recommendations for changes to the codes by comparing with other payers in the state.

The 2007 -2008 Medical Fee Advisory Committee is made up of:

Dr. Colledge, Medical Director, Utah Labor Commission.

Dr. Eric Vanderhooft, Orthopedic Surgeon

Dr. Mark Anderson, Primary Occupational Physician

Dr. Ed Holmes, Occupational Physician

Eric Passey, RPT, Physical Therapist

Gordon McClean, DC, Chiropractor

Peg Howarth, WCF, and Truman Child, American Liberty Insurance, representing payers

Jeff Rowley, Salt Lake County, representing self-insureds

Mari Ann Randall and Melessa Fannesbeck of INGENIX who are Coding Specialists

Dr. Colledge explained that each July the Committee reviews the driving costs of the medical care system such as hospitals, medications, new procedures, frequency of procedures, rising patient expectations, and disabilities. They must then determine how to allocate resources and help the system avoid financial collapse. The Committee compares the amount reimbursed under the RBRVS with Medicare and other payers in the state to determine if adjustments are necessary. Recommendations for 2008-2009 include:

Surgical Codes - Unchanged remaining at \$58 and \$37 based upon the codes

Anesthesia Codes - Unchanged remaining at \$53

Evaluation and Management (E and M) Medicine - increase codes from \$45 to \$46 to cover rising administrative costs in that area

Restorative Services – increase codes from \$44 to \$46

He said these increases are due to the fact that injured workers take an increasing amount of time and paperwork to treat.

Maggie Carpunk – NCCI stated that they had reviewed the changes being proposed to the medical fee schedule and felt the Commission was in line with NCCI based upon their most current information. She added that in April they will have more up-to-date information on pricing for the cycle ending in December.

MOTION: David Bird moved to advise the Commission to approve the recommendations of the Medical Fee Committee and raise evaluation and management (E and M) codes and restorative services codes from \$45 to \$46. His motion includes reviewing NCCI's recommendation following their updated information available in April. **Dawn Atkin** seconded the motion which passed unanimously.

Commissioner Hayashi asked **Dr. Colledge** to address the hospital fee issue before moving on with the agenda. **Dr. Colledge** said the Commission had received a letter from **Truman Childs**, American Liberty Insurance, who is also a member of the Medical Fees Committee. **Mr. Childs** is requesting the creation of a hospital fee schedule for industrial claims in the state of Utah. He felt small insurance companies were at a disadvantage to negotiate hospital fees and wanted to see the playing field leveled for qualified business owners and their employees. He felt a fee schedule would help the situation.

Dr. Colledge brought up the fact that **Jim Olsen** had chaired the hospital fee committee which made recommendations to the WCA Council at past meetings. However, the Council failed to take any action for legislative action on this issue. **Dr. Colledge** urged the Council to again consider establishing a fee schedule, which would require a statutory change, and then pursuing the necessary legislation for the next session.

Mr. Bird stated this is an issue which has been under consideration for a long time. He expressed concern that the Commission would not be able to get the necessary support from major providers currently involved in establishing a hospital fee schedule.

Mr. Rowley spoke in support of a hospital fee schedule and also asked the Commission to consider a pharmacy fee schedule. He felt these costs were growing at a fast pace and a fee schedule could prove beneficial.

Discussion was held by the council as to going through the process of updating the information the Hospital Fee Committee had already gathered and putting together a proposal. It was agreed that health care is a big issue right now and the time was right to pursue such avenues.

MOTION: Mr. Bird moved to have **Larry Bunkall** coordinate the effort with those from the Hospital Fee Committee in pursuing some preliminary options to be presented at the next WCA Council meeting in June, in anticipation of making statutory changes to allow for a fee schedule in the '09 legislative session. **Mr. Kelm** seconded the motion which passed unanimously.

Dr. Colledge will also arrange for the Health Department to make a presentation at the June WCA Council meeting regarding their preliminary work on pharmacy fees.

4. Review Process for 2008 Workplace Safety Grants

Elena Bensor said the Commission is in the process of releasing the applications for 08-09. She gave a draft copy to council members and asked them to review the draft and provide feedback to her. **Ms. Bensor** plans to have the application available on the Commission website by the end of March.

Ms. Bensor introduced **Erin Johnson**, Utah Department of Health, Project Manager for the prescription pain medication management and education study legislated by HB 137 in the '07 session. The Workplace Safety Fund contributed \$250,000 to fund that study for FY08. **Ms. Johnson** gave a budget breakdown of the study's funding and expenditures, and highlighted the accomplishments thus far.

Ms. Bensor explained that it was now up to the Commission to make a decision as to whether to continue funding for FY09 and the amount. The council discussed the merits of the study and felt it was advantageous to have the information which the study provides. They determined it was an appropriate use of workplace safety account money.

MOTION: Ms. Atkin moved to approve up to an additional \$250,000 in matching funds for the pain medication management and education study for FY09. **Mr. Kelm** seconded the motion which passed unanimously.

5. Review 2008 Legislative Session

Mr. Hennebold distributed a summary of legislation passed in the recent session which affects the Labor Commission. ([See attachment](#)).

6. Identify Possible Issues for 2009 Legislative Session

Mr. Bunkall explained that there may be legislation pursued regarding reduction or even possible elimination of the social security offset for workers' compensation benefit recipients. He felt this was an item which should come before the WCA Council. He will research this issue and bring the preliminary findings to the June meeting.

Commissioner Hayashi explained that the Commission may require statutory authority to allow for a private attorney to collect the Commission's penalty debts if a memo of understanding cannot be worked out between all of the parties involved in the current process. Further discussion will take place as details unfold.

7. Other Business

Mr. Bunkall asked the Council for their approval to have the Employers' Reinsurance Fund (ERF) fully fund the employee who currently devotes 100% of her time to the ERF. He also asked for their support in hiring a person to handle the maintenance of the Uninsured Employers' Fund (UEF) rather than using a contract employee as is the current process. He felt both of these funds should pay for the support necessary to administer and maintain the fund.

MOTION: Mr. Kelm moved to support the Commission in funding an employee to maintain the ERF and one for the UEF.

Discussion was held encouraging this item to be listed as an agenda item prior to any action begin taken on it. Members felt there were those who might want to speak to the issue who were not at the meeting and unaware it was being discussed.

SUBSTITUTE MOTION: Mr. Olsen moved that funding for employees to maintain the ERF and the UEF be listed on the June agenda for discussion. **Mr. Bingham** seconded the motion which passed unanimously.

Commissioner Hayashi adjourned the meeting at 2:05 p.m.